ground alone to be less fit than the father to show him the love, care and control a child of that age, who has lived with her all his life in the absence of the father, needs. The father's attitude seemed to me to be prompted by a sense of proprietary rights over the son rather than by any bond of love or affection. I was certainly more impressed by the boy's need for his mother. He was anxious to see his mother whom he had never seen since the father took him over. In any case I have given only care and control to her.

Order accordingly.

Solicitors: *J. Tan Chor-Yong & Co.*

RE ISAAC PAUL RATNAM; LAW SOCIETY OF SINGAPORE v. ISAAC PAUL RATNAM

[O.C.J. (Wee Chong Jin C.J., Chua and Tan Ah Tah JJ.)

July 20, 1973]

[Singapore — Originating Summons No. 255 of 1973]

Advocates and Solicitors — Disciplinary proceedings — Striking off the roll — Conviction for criminal offence relating to dishonesty — Admission of another offence — Sentence of imprisonment and fine — Whether conviction implied a defect in character — Extreme penalty — Legal Profession Act (Cap. 217), s. 84(2)(a) & (b).

The respondent, an advocate and solicitor was on his plea of guilty convicted of an offence under section 108A of the Penal Code for instigating the general manager of Gemini Chit-Fund Corporation Limited, Malaysia Branch, to dishonestly remove property, to wit, five cars and other movable properties belonging to the said company. The respondent after his conviction for the said offence applied with the consent of the Deputy Public Prosecutor for another charge to be taken into consideration as provided in section 171(1) of the Criminal Procedure Code. That charge related to a offence punishable under section 201 of tht Penal Code.

The Magistrate's Court after hearing a plea in mitigation sentenced the respondent to one day's imprisonment and a fine of $4,000 or in default 15 months' imprisonment. As a consequence of his conviction, the respondent appeared before a Disciplinary Committee under the Legal Profession Act. The committee found that the respondent had been convicted of a criminal offence implying a defect of character which made him unfit for his profession within the meaning of section 84(2)(a) of the Legal Profession Act and that he was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(a) of the said Act. On reference of the matter by the Law Society to the High Court,

Held: the respondent was convicted of an offence which clearly implied a defect of character which made him unfit for the profession of an advocate and solicitor. Having considered all the circumstances including the respondent's admission of having committed another serious criminal offence, the court was of the view that the extreme penalty ought to be imposed and that the respondent should be struck off the roll and that he should bear all the costs of the Law Society.

ORIGINATING SUMMONS.

L. P. Thean for the applicants.

K. E. Hilborne for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent, Isaac Paul Ratnam, an advocate and solicitor, who had been in private practice since March 1972 and prior thereto had been a State Counsel in the Attorney-General's Chambers for five years, was on his own plea of guilty convicted on 24th October 1972 in the First Magistrate's Court of the following charge, namely: —

"That he, Isaac Paul Ratnam, on or about the 3rd day of August, 1972, did instigate the General Manager, Gemini Chit-Fund Corporation Limited, Malaysia Branch, Kuala Lumpur, to dishonestly remove property, to wit, five cars and other movable properties, belonging to the said company, and he had by virtue of section 108A of the Penal Code committed an offence punishable under section 424 read with section 116 of the said Code".

The respondent immediately after his said conviction through his counsel applied with the consent of the Deputy Public Prosecutor for another charge to be taken into consideration by the court as provided for by section 171(1) of the Criminal Procedure Code. This charge reads as follows: —

"That he, Isaac Paul Ratnam, on or about the 2nd day of August, 1972, having reason to believe that a certain offence, to wit, criminal breach of trust by an agent has been committed by the Gemini Chit-Fund Corporation Limited, and that such offence was abetted by its directors, Abdul Gaffar and V.K.S. Narayanan, which offences are punishable with imprisonment for life or with imprisonment for a term which may extend to ten years and also with a fine, did cause certain evidence of the said offence to disappear, to wit, files containing the Gemini Chit-Fund Corporation Limited's correspondence, vouchers, bank statements, chit fund receipts and Abdul Gaffar's personal correspondence, with the intention of screening the said Gemini Chit-Fund Corporation Limited, Abdul Gaffar and V.K.S. Narayanan from legal punishment, and he had thereby committed an offence punishable under section 201 of the Penal Code".

The court, after hearing a plea of mitigation by the respondent's counsel who also tendered a statement written by the appellant in mitigation, sentenced the appellant to one day's imprisonment and a fine of $4,000 or in default 15 months' imprisonment. As a consequence of his conviction of a serious criminal offence and his admission of having committed another serious criminal offence he appeared before a Disciplinary Committee duly appointed under the provisions of the Legal Profession Act to hear and investigate the matter and to determine whether cause of sufficient gravity for disciplinary action exists under section 84 of the said Act. Under section 84(1) all advocates and solicitors are subject to the control of the Supreme Court and on due cause shown are liable to be struck off the roll or suspended from practice for any period not exceeding two years or censured. Under section 84(2)(a) such due cause may be shown by proof that an advocate and solicitor "has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession". Under section 84(2)(b) such due cause may be shown by proof that an advocate and solicitor "has been guilty of . . . grossly improper conduct in the discharge of his professional duty . . . ".

In his reply to the statement of case the respondent in effect admitted all the material allegations of fact alleged in the statement of case and admitted the fact of his conviction and that he had admitted to having committed another offence. At the hearing and investigation before the Disciplinary Committee, counsel on behalf of the Law Society relied on the con-

viction as proof of his conviction of a criminal offence within the meaning of section 84(2)(a) of the Legal Profession Act and relied on his admission of another criminal offence as proof of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the said Act. The respondent was present and represented by counsel but did not give evidence before the Disciplinary Committee. His counsel tendered a written submission and elaborated on it. We quote from the report of the Disciplinary Committee: —

"Submissions and Facts

4. At the hearing before us the respondent was represented by counsel, who handed in a written submission, which he read and elaborated on.

5. In essence, the submissions made on behalf of the respondent were as follows. It was suggested that even though he pleaded guilty to the charge referred to it did not follow therefrom that he was in fact guilty of the criminal offence in question, because people sometimes plead guilty, as the respondent did, so as to avoid the chance of being sent to prison. It was also said that the respondent did not in law cause the document in question to disappear, because disappearance would amount to an offence only if the evidence in question cannot be utilised in court, whereas in this case the documents were missing for only 2 weeks. With regard to the letter of the 3rd August, 1972, it was submitted that the respondent merely acted as a 'conduit pipe' and cannot be said to have instigated the disposal of the property of Gemini then in West Malaysia. It was also said that the winding-up petition in Singapore had no effect in Malaysia and the respondent therefore took the view (without giving the matter much thought) that the assets in Malaysia were not affected by the petition.

6. Apart from these points, the rest of the submissions presented on behalf of the respondent went to mitigation".

The Disciplinary Committee found that the respondent had been convicted of a criminal offence implying a defect of character which makes him unfit for his profession within the meaning of section 84(2)(a) of the Legal Profession Act and also found that in causing or attempting to cause the documents referred to in the second criminal charge to disappear he was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the said Act.

Before us, similar submissions were advanced by Mr. Hilborne who appeared for the respondent. With the leave of the court the respondent put in an affidavit sworn by him a few days before the hearing on which he was cross-examined before us by counsel for the Law Society. In the affidavit the respondent, for the first time, asserted that he had erroneously and unintentionally referred in his letter of 3rd August 1972, which letter was the subject matter of the criminal charge on which he was convicted, to the movable properties as the property of Gemini Chit-Fund Corporation Ltd. when the instructions he received from Gaffar, the managing director of the company, was to dispose of Gaffar's movable properties. He was cross-examined on this and in our opinion his explanation was most unsatisfactory. We disbelieved his continued assertion that it was an unintentional error. His demeanour when cross-examined on his new revelation was in our judgment that of a witness who knew he was not telling the truth.

Mr. Hilborne submitted that it is open to this court to look behind the conviction if on the face of the record the conviction is bad *e.g.* if he could show that on the admitted facts before the Magistrate's Court the respondent could not be found in law to have committed the offences as set out in the criminal charge or if no offence is disclosed in the criminal charge. Assuming that this court is entitled to look behind the conviction in the present proceedings, which are disciplinary in nature, where the allegation is based upon the respondent's "conviction of a criminal offence" we are of the opinion that there is no error on the face of the criminal charge and that the admitted facts before the Magistrate's Court justifies its acceptance of the respondent's plea of guilty.

Mr. Hilborne's submission was that section 108A of the Penal Code is not applicable because on the admitted facts the movable properties of the company were situate outside Singapore and it was permissible in law for the movable properties situate outside Singapore of a company, against which a winding-up order has been made by a Singapore court, to be disposed of. We rejected this argument as fallacious. In our judgment section 108A of the Penal Code was properly invoked. That section reads as follows: —

"A person abets an offence within the meaning of this Code who, in Singapore, abets the commission of any act without and beyond Singapore which would constitute an offence if committed in Singapore".

A person who commits in Singapore an act which constitutes dishonestly removing property will have committed an offence punishable under section 424 of the Penal Code. The offence is committed whether or not the property that has been dishonestly removed is situate in or outside of Singapore.

The charge to which the respondent pleaded guilty is that by virtue of section 108A he had committed an offence punishable under section 424 of the Penal Code read with section 116. It mattered not that the movable properties specified in the charge are foreign assets of the company. Section 108A in clear terms would apply if it can be proved that the respondent abetted in Singapore the commission of any act without and beyond Singapore which would constitute an offence punishable under section 424 of the Penal Code if committed in Singapore.

In the present case the respondent pleaded guilty and so the prosecution was not put to prove abetment on the part of the respondent.

The other submission was that the respondent could not be said to "instigate" the general manager of the company to dishonestly remove certain movable properties of the company because he was merely carrying out the instructions of his client, Gaffar, and was thus merely an agent. This submission we also rejected because we are unaware of any principle or of any authority for the proposition that a solicitor who passes on the instructions of his client to another person which instructions when carried out by that other person amounts to the commission of a criminal offence does not "instigate" that other person to commit that criminal offence. The respondent pleaded guilty and admitted in the First Magistrate's Court the facts placed before the court. The facts showed that the respondent dictated the said letter of 3rd August

1972, signed it and personally handed it to someone with instructions to hand it to the general manager of the Kuala Lumpur branch of the company. These facts having regard to the contents of the said letter constitute *prima facie* sufficient evidence of instigation by the respondent.

It was lastly submitted on behalf of the respondent that on the facts and having regard to all the circumstances his conviction could not be said to imply a defect of character which makes him unfit for his profession. We rejected this submission. In our judgment it is the nature of the offence which is the sole criterion in determining whether or not an advocate and solicitor comes within the provisions of section 84(2)(a) of the Legal Profession Act. In our judgment the offence of which the respondent was convicted is one which clearly implies a defect of character which makes him unfit for the profession of an advocate and solicitor.

Finally, having considered all the circumstances including his admission of having committed another serious criminal offence we were in no doubt that the extreme penalty ought to be imposed and we accordingly ordered that the respondent be struck off the roll and that he should bear all the costs of the Law Society.

Order accordingly.

Solicitors: *Hilborne & Co.*

MALAYSIAN REPORTS

SYED HUSIN ALI v. SHARIKAT PENCHETAKAN UTUSAN MELAYU BERHAD & ANOR.

[O.C.J. (Mohamed Azmi J.) March 7, 1973]

[Kuala Lumpur — Civil Suit No. 893 of 1969]

Defamation — Libel — Publication of report of speech of Menteri Besar, Johore containing words defamatory of plaintiff — Damages.

Newspaper — Report of speech containing defamatory words — Damages.

In this case the plaintiff claimed damages for libel contained in a newspaper published by the first defendant and of which the defendant was the editor. The publication was admitted and it was proved that the words complained of referred to the plaintiff. The plaintiff alleged that the words complained of were capable of the following false innuendoes, namely that the plaintiff was dishonest, disloyal to the Government, a subversive element, an irresponsible politician, an ungrateful person, a supporter of President Sukarno and an instigator of unrest in the country. The only issue was whether the words complained of were defamatory of the plaintiff.

Held: (1) in the circumstances of this case the words complained of, when considered in the context of the news report, were defamatory of the plaintiff;

(2) having regard to all the circumstances of the case, particularly the nature of the libel, the position of the plaintiff and the extent of the publication, damages in the sum of $6,500 would be fair and adequate to vindicate him to the public and console him for the wrong done.

Cases referred to:-

(1) *Lewis* v. *Daily Telegraph Ltd.* [1964] A.C. 234.

(2) *Capital and Counties Bank* v. *Henty and Sons* (1880) 5 C.P.D. 514 at p. 536.

(3) *Cassidy* v. *Daily Mirror Newspapers Ltd.* [1929] 2 K.B. 331 at p. 339.

(4) *Grubb* v. *Bristol Limited Press Ltd.* [1963] 1 Q.B. 309 at p. 327.

(5) *Byrne* v. *Deane* [1937] 1 K.B. 818 at p. 833.

(6) *Cassell & Co. Ltd.* v. *Broome & Anor.* [1972] 1 All E.R. 801 at p. 824.

(7) *Praed* v. *Graham* (1889) 24 Q.B. D. 53 at p. 55.

(8) *Uren* v. *John Fairfax & Sons Pty. Ltd.* (1967) 117 C.L.R. 118 at p. 150.

(9) *Chop Kim Lee Seng Kee* v. *Yeo Kiat Jin* [1956] M.L.J. 67.

(10) *Yap Bor Lim* v. *Chia Thye Poh & Anor.* [1965] 2 M.L.J. 123.

(11) *Sandison* v. *Malayan Times Ltd. & Anor.* [1964] M.L.J. 332.

(12) *Rajagopal* v. *Rajan* [1972] 1 M.L.J. 45.

(13) *Rookes* v. *Barnard* [1964] 1 All E.R. 367.

CIVIL SUIT.

S. T. Gamany for the plaintiff.

Bhag Singh for the defendants.

Mohamed Azmi J.: This is a claim for damages for libel contained in *Utusan Melayu* newspaper, of which the first defendants are the proprietors, printers and publishers, and the second defendant is the editor. It is admitted in the pleadings that the plaintiff is and was at all material times a lecturer of the University of Malaya, and that *Utusan Melayu* is an influential Malay daily newspaper having a wide circulation throughout the country. The plaintiff complains that